

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

MSD CONSUMER PRODUCTS, INC., SANTARUS, INC. and THE CURATORS OF THE UNIVERSITY OF MISSOURI,	§	
	§	
Plaintiffs,	§	Civil Action No. 3:11-cv-07437-PGS-LHG
	§	
v.	§	
	§	
ZYDUS PHARMACEUTICALS (USA) INC.,	§	
	§	
Defendant.	§	
	§	
	§	

JOINT MOTION AND STIPULATED ORDER

WHEREAS Plaintiffs MSD Consumer Products, Inc. (“MSD”), Santarus, Inc. (“Santarus”), and The Curators of the University of Missouri (the “University”) (collectively “Plaintiffs”) brought the above-captioned action against Defendant Zydus Pharmaceuticals (USA) Inc. (“Zydus”), alleging infringement of United States Patent Nos. 6,699,885, 6,489,346, 6,645,988, and 7,399,772 (collectively, “the Patents-In-Suit”), predicated on Zydus’ filing of Abbreviated New Drug Application No. 203345 (“Zydus OTC ANDA”), to obtain approval for the commercial manufacture, use or sale of generic versions of omeprazole and sodium bicarbonate capsules, 20 mg/1100 mg, a generic version of ZEGERID OTC.

WHEREAS Zydus has been served with the Complaint in this action, but no Answer has been yet been filed;

WHEREAS Santarus and the University previously brought patent infringement lawsuits against Par Pharmaceuticals, Inc. (“Par”) for infringement of the Patents-in-Suit in the

United States District Court for the District of Delaware (“Delaware Court”), consolidated as *Santarus, Inc. v. Par Pharmaceutical, Inc.*, CA. No. 07-551-GMS (“Delaware Litigation”);

WHEREAS the Delaware Court ruled that the asserted claims of the Patents-in-Suit were invalid:

WHEREAS Santarus and the University have filed an appeal of the Delaware Court’s invalidity rulings in the United States Court of Appeals for the Federal Circuit, which was assigned Federal Circuit Docket Number 2010-1360 (“Appeal”);

WHEREAS Plaintiffs and Zydus agreed to stay this litigation pending the outcome of the Appeal [Dkt. Nos. 13 and 14];

WHEREAS the Federal Circuit issued its ruling in the Appeal on September 4, 2012, reversing the Delaware Court’s rulings that had invalidated claims 4, 5, 8, 10, 14, 15, 20, and 21 of the ‘772 patent;

WHEREAS the Plaintiffs and Zydus agreed, and the order by this Court staying this litigation provided, that, in the event that the Appeal resulted in a ruling vacating, reversing, or remanding for further proceedings any invalidity ruling by the Delaware Court with respect to one or more claims of the Patents-in-Suit, the Parties would, within five business days of any such ruling in the Appeal, jointly move this Court to enter a proposed stipulated order that includes a provision lifting the stay and reopening the case;

WHEREAS the Plaintiffs wish to amend the Complaint to remove infringement counts based on patents that have been held invalid by the Federal Circuit’s decision, and the Plaintiffs and Zydus agree that the Plaintiffs will have leave to amend to reinstate those counts to the extent that the Federal Circuit’s rulings affirming the invalidity of patents are reversed or vacated;

IT IS HEREBY STIPULATED AND AGREED, subject to the approval and order of the Court, that:

1. The stay of this litigation is lifted effective immediately and the case is hereby reopened;
2. Plaintiffs shall have 10 days from the date of this Order to file an Amended Complaint;
3. Zydus shall have 20 days from the date of the filing of the Plaintiffs' Amended Complaint to answer, move against, or otherwise respond to Plaintiffs' Amended Complaint;
4. In the event that any of the Federal Circuit's rulings in the appeal of *Santarus, Inc. v. Par Pharmaceutical, Inc.*.. CA. No. 07-551-GMS affirming the invalidity of any claim of a patent are reversed or vacated, Plaintiffs shall have leave to file an amended pleading adding a count of infringement of that patent; and
5. Each party shall bear its own costs and fees in this action.

STIPULATED AND AGREED:

Dated: September 13, 2012 GIBBONS P.C. <u>/s/ Sheila McShane</u> Sheila F. McShane GIBBONS P.C. One Gateway Center Newark, New Jersey 07102-5310 (973) 596-4500 (973) 639-6482 – Fax	<u>s/ Vincent P. Rao II</u> Vincent P. Rao II KELLEY DRYE & WARREN LLP 200 Kimball Ave. Parsippany, NJ 07054 Telephone No.: (973) 503-5900 Facsimile No.: (973) 503-5950 <i>Attorney for Defendant Zydus Pharmaceuticals (USA) Inc.</i>
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So Ordered this 18th day
of September, 2012
